**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BROOKS INSTRUMENT, LLC, and BI PRODUCTS, LLC, **Plaintiffs,** v. **MKS INSTRUMENTS, INC.,** **Defendant.**	Civil Action No. 6:10-cv-223 **JURY TRIAL DEMANDED**

DEFENDANT MKS INSTRUMENTS, INC.'S ANSWER TO BROOKS INSTRUMENT, LLC AND BI PRODUCTS, LLC'S ANSWER AND COUNTERCLAIM TO MKS INSTRUMENTS, INC'S COUNTERCLAIMS (DOC. NO. 42)

Defendant MKS Instruments, Inc. ("MKS") answers plaintiff Brooks Instrument, LLC's ("Brooks") and plaintiff BI Products, LLC's ("BI Products") (collectively "Plaintiffs") Counter-counterclaims for Declaratory Judgment for Non-Infringement and Invalidity of U.S. Patent No. 6,810,308 (Doc. No. 42) as follows:

ANSWER TO COUNTER-COUNTERCLAIMS

1. In response to paragraph 1, MKS incorporates by reference its allegations in response to paragraphs 1 through 8 and allegations of paragraphs 44 through 59 of MKS's Counterclaims of its Answer, Affirmative Defenses and Counterclaims to Plaintiffs' Third Amended Complaint (Doc. No. 41).

JURISDICTION AND VENUE

2. Paragraph 2 sets forth legal conclusions for which no response is required.

3. Paragraph 3 sets forth legal conclusions for which no response is required.

BACKGROUND

4. MKS admits that in Doc. No. 41 MKS asserted a claim for infringement of U.S. Patent No. 6,810,308 (the "'308 Patent") against Plaintiffs, which MKS had not previously asserted against the Plaintiffs.

5. Admitted.

ANSWER TO CLAIM FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '308 PATENT

6. MKS incorporates paragraphs 1-5 above as if fully set forth herein.

7. MKS admits that an actual case or controversy exists between Plaintiffs and MKS and that MKS filed a counterclaim against Plaintiffs alleging infringement of the '308 Patent. MKS denies the remainder of the allegations of paragraph 7 on the basis that they are legal contentions that require no answer.

8. Denied. In response to the allegations of paragraph 8, Plaintiffs hereby specifically incorporate paragraphs 53-59 of its Counterclaims in its Answer, Affirmative Defenses and Counterclaims to Plaintiffs' Third Amended Complaint (Doc. No. 41).

ANSWER TO CLAIM FOR DECLARATORY JUDGMENT OF INVALIDITY OF THE '308 PATENT

9. MKS incorporates paragraphs 1-8 above as if fully set forth herein.

10. MKS admits that an actual case or controversy exists between Plaintiffs and MKS and that MKS filed a counterclaim against Plaintiffs alleging infringement of the '308 Patent. MKS denies the remainder of the allegations of paragraph 10 on the basis that they are legal contentions that require no answer.

11. MKS denies the allegations of paragraph 11.

12. MKS denies the allegations of paragraph 12.

EXCEPTIONAL CASE

13. Paragraph 13 is not an allegation for which a response is required. However, MKS denies that Plaintiffs are entitled to a judgment that the '308 Patent is not infringed by Plaintiffs and is invalid.

DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure, MKS respectfully demands a jury trial of all issues triable to a jury in this action.

Dated: January 7, 2011

Respectfully submitted,

By: /s/ *John C. Low*

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**COUNSEL FOR DEFENDANT,
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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 7th day of January, 2011. Any other counsel of record will be served by first class mail.

/s/ *John C. Low*
John C. Low